

J. Andrew Coombs (SBN 123881)
andy@coombspc.com
 Annie S. Wang (SBN 243027)
annie@coombspc.com
 Nicole L. Drey (SBN 250235)
nicole@coombspc.com
 J. Andrew Coombs, A Prof. Corp.
 517 East Wilson Avenue, Suite 202
 Glendale, California 91206
 Telephone: (818) 500-3200
 Facsimile: (818) 500-3201

Attorneys for Plaintiff
 Adobe Systems Incorporated

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

Adobe Systems Incorporated,	)	Case No. C10-02769 CW
)	
Plaintiff,	)	[REDACTED]
)	
v.)	
	)	PLAINTIFF'S MOTIONS IN LIMINE;
Anthony Kornrumpf a/k/a Tony Kornrumpf,	)	DECLARATION AND EXHIBITS IN
Hoops Enterprise, LLC, and Does 2 – 10,	)	SUPPORT
inclusive,)	
	)	<u>Final Pretrial Conference:</u>
Defendants.	)	Date: June 6, 2012
	)	Time: 2:00 p.m.
	)	Courtroom: 2, 4 th Floor.

TO THE COURT AND TO DEFENDANTS:

Pursuant to the Court's Order for Pretrial Preparation, Plaintiff Adobe Systems Incorporated ("Adobe") submits the following motions in limine:

- 1) Motion in Limine No. 1, to Exclude All References to Alleged Release and, in the Alternative for Summary Adjudication;
- 2) Motion in Limine No. 2, to Exclude All References to the First Sale Defense and Defendants Dismissed Counterclaims Based on That Defense;
- 3) Motion in Limine No. 3, to Exclude All Evidence and Witnesses Not Previously Produced or Disclosed;

- 4) Motion in Limine No. 4, to Exclude All Evidence of Enforcement Efforts of the Software and Information Industry Association Unrelated to Adobe Products;
- 5) Motion in Limine No. 5, to Exclude All Reference to Acts by Third Parties; and
- 6) Motion in Limine No. 6, to Exclude Party Attorneys as Witnesses.

DATED: May 22, 2012

J. Andrew Coombs, A Prof. Corp.

By: /s/ J. Andrew Coombs
J. Andrew Coombs
Annie S. Wang
Nicole L. Drey
Attorneys for Plaintiff Adobe Systems Incorporated

TABLE OF CONTENTS

INTRODUCTION	1
Motion in Limine No. 1 (Alleged Release)	2
A. <u>The Prior Settlement Agreement Did Not Grant Kornrumpf Permission to</u>	
<u>Distribute OEM Software</u>	3
1. As a Matter of Law, The Release Does Not Permit Defendants to Engage in the	
Conduct Alleged Herein.	5
2. The Agreement Excludes Activity Not At Issue in the Prior Litigation With Each	
Side Reserving Its Position Regarding Other Sales (Including OEM) Not At Issue in	
the Litigation	6
3. Defendant Hoops Enterprises, LLC Is Not a Party to the Agreement	6
4. Defendants Have Identified No Parol Evidence to Resolve Any Alleged	
Ambiguity, and Such Parol Evidence That Does Exist Confirms This Interpretation of	
the Parties' Agreement	6
B. <u>Defendants' Failure to Plead Release and to Make Appropriate Disclosures</u>	
<u>Precludes Them From Belatedly Asserting the Defense or Introducing</u>	
<u>Otherwise Irrelevant Evidence and Argument Regarding Release</u>	8
1. Defendants' Failure to Plead the Prior Settlement Release in Their Answer Results	
in Waiver	8
2. Adobe is Prejudiced by Defendants' Failure to Allege the Defense	9
3. Defendants Failed to Disclose the Evidence They Intend to Rely on to Further	
Their Defense	10
C. <u>The Release is Irrelevant and Inherently More Prejudicial Than Probative and, as</u>	
<u>such, Appropriately Excluded Under Fed. R. Evid. 402-403</u>	11

1	1. The Prior Settlement Agreement Release is of Scant Probative Value in the	
2	Present Matter Involving Different Parties and Products	11
3	2. Confusion, Prejudice, Delay and Waste of Time are Near Certainties	12
4	Motion in Limine No. 2 (First Sale)	13
5	Motion in Limine No. 3 (Not Timely Produced or Disclosed)	13
6	Motion in Limine No. 4 (SIIA Enforcement Efforts)	15
7	Motion in Limine No. 5 (Unrelated Enforcement Efforts)	16
8	Motion in Limine No. 6 (Improper Violation of Advocate-Witness Rule)	16
9	CONCLUSION	17
10	DECLARATION OF ANNIE S. WANG	18

TABLE OF AUTHORITIES

CASES

<i>Airborne Freight Corp. v. McPherson</i> , 427 F.2d 1283, 1285 (9 th Cir. 1970)	5
<i>Banque Hypothecaire Du Canton De Geneve v. Union Mines, Inc.</i> , 652 F. Supp. 1400, 1401 (D. Md. 1987).....	8
<i>Brobeck, Phleger & Harrison v. Telex Corp.</i> , 602 F.2d 866, 871 (9 th Cir. 1979).....	5
<i>Dickson, Carlson & Campillo v. Pole</i> , 83 Cal. App. 4 th 436, 446, 99 Cal. Rptr. 2d 678 (2000)	12
<i>Dore v. Arnold Worldwide, Inc.</i> , 39 Cal.4th 384, 46 Cal.Rptr.3d 668, 139 P.3d 56, 60 (Cal.2006)	7
<i>EPA Real Estate P'ship v. Kang</i> , 12 Cal.App.4th 171, 175, 15 Cal.Rptr.2d 209 (Cal.Ct.App.1992)	6
<i>Escriba v. Foster Poultry Farms</i> , 793 F. Supp. 2d 1147 (E.D. Cal. 2011)	12
<i>Gardiner v. Gaither</i> , 162 Cal. App. 2d 607, 329 P.2d 22 (1958).....	5
<i>General Elec. Co. v. Superior Court</i> , 45 Cal.2d 897, 899-900, 291 P.2d 945 (1955)	12
<i>Gerdlund v. Elec. Dispensers Int'l</i> , 190 Cal.App.3d 263, 270, 235 Cal.Rptr. 279 (Cal.Ct.App.1987)	6
<i>Healy Tibbitts Construction Co. v. Insurance Co. of North America</i> , 679 F.2d 803 (9 th Cir. 1982)	9-10
<i>Hoffman v. Constr. Protective Servs.</i> , 541 F.3d 1175, 1179 (9 th Cir. 2008)	10
<i>In re Gayle Sterten</i> , 546 F.3d 278, 285 (3d Cir. 2008).....	9
<i>In re Japanese Electronic Products Antitrust Litig.</i> , 723 F.2d 238, 260 (3d Cir. 1983) <i>rev'd on others grds</i> 475 U.S. 574 (1986).....	1
<i>Laborers' Pension Fund v. A & C Environmental, Inc.</i> , 301 F.3d 768, 773 (7 th Cir. 2002).....	13
<i>Luce v. U.S.</i> , 469 U.S. 38, 40 (1984).....	1
<i>Magana v. Com. of the Northern Mariana Islands</i> , 107 F.3d 1436, 1446 (9 th Cir. 1997)	9
<i>Mathis v. Philips Chevrolet, Inc.</i> , 269 F.3d 771, 776-776 (7 th Cir. 2001).....	15
<i>Owens v. Kaiser Foundation Health Plan, Inc.</i> , 244 F.3d 708, 713 (9 th Cir. 2001)	9
<i>Pacific Gas and Electric Co. v. G. W. Thomas Drayage & Rigging Co., Inc.</i> , 69 Cal.2d 33, 69 Cal. Rptr. 561, 442 P.2d 641 (1968).....	5, 7

1	<i>Palmieri v. Defaria</i> , 88 F.3d 136, 141 (2d Cir. 1996).....	8
2	<i>Pivot Point Intern., Inc. v. Charlene Products, Inc.</i> , 932 F. Supp. 220, 222 (N.D. Ill. 1996)	8
3	<i>Rivera v. Anaya</i> , 726 F.2d 564, 566 (9 th Cir. 1984)	9
4	<i>SCO Group, Inc. v. Novell, Inc.</i> , 578 F.3d 1201, 1209 (10 th Cir. 2009).....	6-7
5	<i>Simmons v. Navajo County, Ariz.</i> , 609 F.3d 1011, 1023 (9th Cir. 2010)	9
6	<i>U.S. v. Prantil</i> , 764 F.2d 548, 552-553 (9 th Cir. 1985).	16-17
7	<i>Wilson v. Bradlees of New England, Inc.</i> , 250 F.3d 10, 21 (1 st Cir. 2001)	15
8	<i>Yeti by Molly v. Deckers Outdoor Corporation</i> , 259 F.3d 1101, 1106 (9 th Cir. 2001)	10, 14-15
9	STATUTES AND RULES	
10	17 U.S.C. § 512(g)(2)(C).....	4
11	Fed. R. Civ. P. 8(c)	8
12	Fed. R. Civ. P. 26	10, 13-14
13	Fed. R. Civ. P. 37(c)	10, 14
14	Fed. R. Evid. 402	11, 15
15	Fed. R. Evid. 403	11-12, 15
16	Cal.Code Civ. Proc. § 1856(a).....	6

INTRODUCTION

Pursuant to the Court's Order for Pretrial Preparation, Plaintiff Adobe Systems Incorporated ("Adobe") hereby moves the Court to exclude: evidence, argument and any reference to (1) an alleged Release; (2) the first sale defense; (3) evidence or witnesses not timely produced or disclosed; (4) enforcement efforts of the Software and Information Industry Association (SIIA) unrelated to efforts undertaken on behalf of Adobe; (5) Defendants' acts by unrelated third parties; and (6) to prevent Defendants from violating the witness advocate rule by calling as witnesses, counsel for Adobe and counsel for Defendants. Adobe's Motion in Limine regarding the purported Release is, in the alternative, a motion for summary adjudication brought belatedly due to Defendants' own belated assertion of this purported affirmative defense.

A motion in limine is any motion to exclude anticipated prejudicial evidence before the evidence is actually offered. *Luce v. U.S.*, 469 U.S. 38, 40 (1984). Obtaining an advance ruling on the admission of specific evidence or resolving critical evidentiary issues at the outset of the trial enhances the efficiency of the trial process. *In re Japanese Electronic Products Antitrust Litig.*, 723 F.2d 238, 260 (3d Cir. 1983) *rev'd on others grds* 475 U.S. 574 (1986). The Court's authority follows from its inherent authority to manage the course of trials. *Luce*, 469 U.S. at 41, n.4.

Adobe's motions in limine are narrowly tailored to exclude irrelevant, prejudicial evidence which can only serve to distract the jury and to waste valuable judicial resources. Some of the motions are so self-evident (e.g. exclusion of evidence related to a defense already ruled upon by the Court) that no argument or authority is strictly necessary. Others, such as Adobe's motion to exclude argument or evidence pertaining to a release which Defendants now belatedly assert to exonerate their infringing activity, are of sufficient moment to the remaining issues between the parties that they are appropriate to resolve the issue as a matter of law.¹ Defendants' clear motive to introduce new and improper evidence and witnesses, on the alleged release and other issues, one month before trial, unquestionably prejudices Adobe. Additionally, arguments concerning the

¹Plaintiff urges the Court to rule upon this issue of the alleged release for lack of disclosure or as a matter of law as it will drastically streamline the issues left for trial and dispense with much of Defendants' last minute tactics to introduce never before disclosed evidence and witnesses.

1 conduct of unrelated third parties or of enforcement efforts against Mr. Kornrumpf not related to
 2 Adobe product, should not further distract from the narrow questions left for the jury to decide on
 3 Defendants' liability for copyright and trademark infringement.

4 The matters at issue in the following motions in limine are appropriately excluded as
 5 waived, irrelevant, confusing and/or unjustly prejudicial.

6 **Motion in Limine No. 1 (Alleged Release)**

7 Defendants have suddenly suggested that, having now lost their first sale defense in the
 8 Court's February 1, 2012, Order, they intend to argue that a particular clause in the parties' prior
 9 settlement agreement permitted Defendants to sell the OEM software at issue in the present case.
 10 This argument and associated evidence² should be excluded for at least the following two reasons.

11 (1) The clause at issue can be interpreted as a matter of law, and should be, by the Court. It
 12 is plain on its face that there is no "release" regarding OEM software. This subject would have
 13 been part of Adobe's summary judgment motion had Defendants properly pleaded it or timely
 14 raised it (they did not, and still have not, e.g., filed no amended Answer). It is clear that the
 15 purported release does not serve to release the conduct at issue herein nor would it even apply to all
 16 of the defendants. Even were the Court to consider parol evidence (which Adobe submits is not
 17 required), the relevant parol evidence shows that

18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]

21 Should the Court choose to permit Defendants
 22 to make this new argument, Adobe requests that it be adjudicated as a matter of law prior to trial,
 23 and rejected for the reasons set forth below.

24 And (2) because "release" is an affirmative defense, and Defendants have not pleaded it, it
 25 was waived and Defendants should be precluded from making this argument. Realizing their fatal
 26 failure to disclose this alleged defense in their Amended Answer, Defendants attempt to bootstrap

27
 28 ² In addition to probable testimony of Kornrumpf, Defendants have identified (the second-to-last unnumbered exhibit) the confidential settlement agreement from the first action concerning illegal sales of academic software.

the defense into their broad boiler-plate equitable defenses of unclean hands and/or laches. Docket No. 30-1, ¶¶ 17, 18. The alleged release was an afterthought and does not support application of any of the asserted equitable defenses. Indeed, the terms of the release itself are irrelevant to the purported equitable defenses. This inappropriate attempt to enlarge the dispute between the parties on the eve of trial (and after close of the discovery cutoff) should be rejected. The failure to plead was not harmless. Defendants have (until very recently) failed to make any disclosures evidencing application of the alleged release to these purported defenses. Improperly, they name counsel for Adobe and their own counsel as witnesses on this issue as part of the pretrial exchange. Their failure to conduct themselves appropriately as required pursuant to the Federal Rules of Civil Procedure all support exclusion of evidence or argument pertaining to the purported defense. This failure prejudiced Adobe in that Adobe could not formulate discovery (now closed) based upon an alleged defense that did not exist at the time. Moreover, Defendants' naming of counsel for Adobe as a witness on this alleged defense is a clear indication of the prejudice suffered by Adobe by Defendants' inexcusable waiver.

For any one of the foregoing reasons, all evidence, argument or reference to the alleged release is properly excluded and should not be heard by the jury.

A. The Prior Settlement Agreement Did Not Grant Kornrumpf Permission to Distribute OEM Software.

Defendant Kornrumpf was previously sued by Adobe. *Adobe Systems Incorporated v. Kornrumpf*, Case No. C08-5513 CW (Complaint filed Dec. 9, 2008). Adobe's claims were based upon investigation and evidence relating to his sales of Academic versions of Adobe software in violation of Adobe licensing restrictions. Supplemental Declaration of Kornrumpf, Docket No. 83-1, Ex. A ("It was about EDU software we sold last year, not these commercially licensed OEMs.") That action was resolved and a Consent Decree entered by the Court. *Kornrumpf*, C08-5513, Docket No. 27, Permanent Injunction and Dismissal With Prejudice ("Prior Injunction") (attached as Exhibit C to the Declaration of Annie Wang ("Wang Decl.")). Counsel for Kornrumpf requested that the Prior Injunction address only those versions of Adobe software which were

1 either undisputed (e.g. pirated software) or which were at issue in the litigation (i.e. Academic). *Id.*
2 at ¶ 4; *see also* Wang Decl. at Ex. B; Docket No. 143-2, Ex. B to Declaration of Anthony
3 Kornrumpf in Opposition to Plaintiff's Motion for Summary Judgment ("Settlement Agreement")
4 at ¶ 4.

5 [REDACTED]
6 [REDACTED] Prior
7 Injunction at ¶ 4; Settlement Agreement at ¶ 4.

8
9 Within months after the resolution of the original action addressing Academic versions of
10 Adobe software, Adobe learned that Kornrumpf was engaged in a large scale campaign of sales
11 involving OEM versions of Adobe software using the eBay sales platform. In an attempt to
12 efficiently resolve its claims against Kornrumpf without using judicial resources, Adobe employed
13 the eBay notice and takedown procedure to have eBay remove Kornrumpf's infringing listings of
14 Adobe OEM software. Kornrumpf transmitted counter-notices to eBay, counter-notices which
15 under the terms of the Digital Millennium Copyright Act, required eBay to relist the infringing
16 offers, unless Adobe filed suit. 17 U.S.C. § 512(g)(2)(C). This Action by Adobe was therefore
17 necessitated by Kornrumpf's refusal to cease and desist from selling Adobe OEM software, despite
18 his knowledge of wrongdoing derived from the original action pertaining to sales of Adobe
19 Academic software and despite the repeated notices provided through the eBay notice and
20 takedown process.

21 Throughout the prosecution of this Action, Defendants have implicitly recognized this
22 situation and confined their defense to an assertion that they are within their rights to engage in the
23 conduct alleged in the Complaint because of the "first sale doctrine." *See* Answer, Docket No. 14,
24 Joint Case Management Statement, Docket No. 17, Amended Answer, Docket No. 30-1, 33,
25 Counterclaim, Docket No. 15, and Amended Counterclaim, Docket No. 50, and Opposition to
26 Adobe's Motion for Partial Summary Judgment, Docket No. 141.

27 Perhaps realizing the futility of their first sale argument which was eventually rejected
28 (Docket No. 160), Defendants first began to seriously assert that their conduct was also expressly

permitted by a settlement agreement entered into between the parties in their prior action in opposition to Adobe's motion for partial summary judgment. Declaration of Kornrumpf in Support of Opposition to Adobe's Motion for Partial Summary Judgment ("Kornrumpf MSJ Decl.") at ¶ 2, Ex. B, Docket No. 143, filed December 29, 2011. No documents concerning the prior settlement agreement were disclosed by Defendants in their Rule 26 disclosures or produced in discovery. Wang Decl. at ¶ 2. The Settlement Agreement itself was only made part of this record by Defendants on December 29, 2011, in response to Adobe's already filed motion for partial summary judgment. Docket No. 143. Additional witnesses regarding this defense were named approximately one month before trial was set to begin as part of pretrial disclosures further demonstrating the alleged release is a desperate afterthought. Adobe was prevented from bringing this issue to the Court's attention within the normal course by Defendants' discovery and disclosure failures but it is nonetheless appropriate for summary adjudication or exclusion before trial.

1. As A Matter of Law, The Release Does Not Permit Defendants to Engage in the Conduct Alleged Herein.

Under California law, "the determination of whether a contract is ambiguous presents a question of law." *Airborne Freight Corp. v. McPherson*, 427 F.2d 1283, 1285 (9th Cir. 1970) *citing Gardiner v. Gaither*, 162 Cal. App. 2d 607, 329 P.2d 22 (1958). The Court "must receive extrinsic evidence concerning...the "circumstances under which the agreement was made." *Airborne Freight Corp.*, 427 F.2d at 1285 *citing Pacific Gas and Electric Co. v. G. W. Thomas Drayage & Rigging Co., Inc.*, 69 Cal. 2d 33, 69 Cal. Rptr. 561, 442 P.2d 641 (1968). However, if it finds that "the language of the instrument is not reasonably susceptible of interpretation and is unambiguous," extrinsic evidence is barred to vary the terms of the contract. *Id.* "The case may then be disposed of by summary judgment." *Brobeck, Phleger & Harrison v. Telex Corp.*, 602 F.2d 866, 871 (9th Cir. 1979) *citing Airborne Freight Corp.*, 427 F.2d at 1286. Summary judgment is appropriate to resolve this late raised challenge to the prior settlement agreement release.

2. The Agreement Excludes Activity Not At Issue in the Prior Litigation With Each Side Reserving Its Position Regarding Other Sales (Including OEM) Not At Issue in That Litigation.

The pertinent language of both the Settlement Agreement and filed Permanent Injunction as set forth above is clear and consistent. There was no license to sell OEM software included as part of the resolution of the prior action.

See Settlement

Agreement at ¶ 4. There was no “carve-out” express or implied by the language of the agreement or injunction to allow Defendants to sell OEM software outside of the OEM licensing restrictions. The documents are clear and unambiguous.

3. Defendant Hoops Enterprises, LLC Is Not A Party to The Agreement.

Even were the release given the interpretation advanced on behalf of Defendants, there is no provision to extend its terms to third parties, specifically including Defendant Hoops Enterprises, LLC. Hoops Depo. at p. 10:13-16 (Hoops organized after last action was resolved).

4. Defendants Have Identified No Parol Evidence to Resolve Any Alleged Ambiguity, and Such Parol Evidence That Does Exist Confirms This Interpretation of the Parties’ Agreement.

“California law ‘generally prohibits the introduction of any extrinsic evidence to vary or contradict the terms of an integrated written instrument.’” *SCO Group, Inc. v. Novell, Inc.*, 578 F.3d 1201, 1209 (10th Cir. 2009) *citing Gerdlund v. Elec. Dispensers Int’l*, 190 Cal.App.3d 263, 270, 235 Cal.Rptr. 279 (Cal.Ct.App.1987); *see also* Cal.Code Civ. Proc. § 1856(a). “Such a writing ‘may not be contradicted by even the most persuasive evidence of collateral agreements. Such evidence is legally irrelevant.’” *SCO Group, Inc.*, 578 F.3d at 1209 *citing EPA Real Estate P’ship v. Kang*, 12 Cal.App.4th 171, 175, 15 Cal.Rptr.2d 209 (Cal.Ct.App.1992) (citations omitted). “The rule ‘is based upon the premise that the written instrument *is* the agreement of the parties.’” *Id.* (citations omitted) (emphasis in original).

1 However, “[e]ven if a contract appears unambiguous on its face, California law permits the
 2 use of extrinsic evidence to expose ‘a latent ambiguity...’ which reveals more than one possible
 3 meaning to which the language of the contract is yet reasonably susceptible.” *SCO Group, Inc.*,
 4 578 F.3d at 1209-10 citing *Dore v. Arnold Worldwide, Inc.*, 39 Cal.4th 384, 46 Cal.Rptr.3d 668,
 5 139 P.3d 56, 60 (Cal.2006) (emphasis added by *SCO Group, Inc.*). “The test of admissibility of
 6 extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the
 7 court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove
 8 a meaning to which the language of the instrument is reasonably susceptible.” *SCO Group, Inc.*,
 9 578 F.3d at 1210 quoting *Pacific Gas & E. Co.*, 442 P.2d at 644. “Thus, California law does not
 10 permit the use of extrinsic evidence to establish an ambiguity in the parties’ intent independent
 11 from the terms of the contract; instead, it can only be used to expose or resolve a latent ambiguity
 12 in the language of the agreement itself.” *SCO Group Inc.*, 578 F.3d at 1210. There was no
 13 ambiguity in the language of the agreement which is plain on its face. The injunction is consistent
 14 with the agreement. Defendants did not identify or disclose any extrinsic evidence. Wang Decl. ¶
 15 2. Instead, emails, copies of which Defendants’ counsel have in their possession, support the plain
 16 meaning of the documents.

17 Counsel for Kornrumpf specifically explained:

18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

23 Wang Decl. at ¶ 3, Ex. B- (June 12, 2009 email from Michael Miretsky of McCurdy &
 24 Leibl to Annie Wang of J. Andrew Coombs, A P.C.) (emphasis added). [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]
 28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 There was no "carve-out" or license to sell OEM granted to Defendant Kornrumpf, ever, as
10 a matter of law.

11 **B. Defendants' Failure to Plead Release and to Make Appropriate Disclosures Precludes**
12 **Them From Belatedly Asserting the Defense or Introducing Otherwise Irrelevant**
13 **Evidence and Argument Regarding Release.**

14 **1. Defendants' Failure to Plead The Prior Settlement Release in Their Answer**
15 **Results in Waiver.**

16 The Court should exclude evidence that is irrelevant, untimely, and unfairly prejudicial
17 under the Federal Rules of Evidence and as an act of its inherent power to manage trials. Motions
18 in limine can "aid the trial process by enabling the Court to rule in advance of trial on the relevance
19 of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument
20 at, or interruption of, the trial." *Palmieri v. Defaria*, 88 F.3d 136, 141 (2d Cir. 1996) quoting
21 *Banque Hypothecaire Du Canton De Geneve v. Union Mines, Inc.*, 652 F. Supp. 1400, 1401 (D.
22 Md. 1987). They also may save the parties time, effort and cost in preparing and presenting their
23 cases. *Pivot Point Intern., Inc. v. Charlene Products, Inc.*, 932 F. Supp. 220, 222 (N.D. Ill. 1996).
24 The Court's intervention in this instance could not be more appropriate.

25 Pursuant to Fed. R. Civ. P. 8(c), "a party must affirmatively state any avoidance or
26 affirmative defense." Failure to do so generally results in waiver. Nowhere in Defendants'
27 Answer, Amended Answer, Counterclaim or Amended Counterclaim is there any mention of a
28

1 prior settlement release. Docket Nos. 14, 15, 30-1 (filed by Docket No. 33), and 50. Thus,
 2 Defendants' have waived any defense of a settlement release for OEM sales.

3 **2. Adobe Is Prejudiced By Defendants' Failure to Allege the Defense.**

4 Despite the Ninth Circuit's liberalization of the requirement to plead, relaxation of the rule
 5 is allowed "only if the delay does not prejudice the plaintiff." *Owens v. Kaiser Foundation Health*
 6 *Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) *quoting Magana v. Commonwealth of the Northern*
 7 *Mariana Islands*, 107 F.3d 1436, 1446 (9th Cir. 1997). The focus is on notice and whether the
 8 omission "specifically deprived [the plaintiff] of an opportunity to rebut that defense or to alter her
 9 litigation strategy accordingly." *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1023 (9th Cir.
 10 2010) (allowing defense which was raised in answer and briefed) *citing In re Gayle Sterten*, 546
 11 F.3d 278, 285 (3d Cir. 2008). Defendants' failed to provide adequate notice that they intended to
 12 raise the prior settlement agreement as a purported release or other basis for defense.

13 Defendants through their pleadings, disclosures, briefs and arguments have made clear that
 14 their defense was based on the so-called "first sale doctrine." Adobe has thus litigated this matter
 15 on that basis including through summary judgment. Defendants had several years to seek leave to
 16 further amend their answer or their counterclaims, but they failed to provide Adobe with notice of
 17 their intentions to pursue this defense. Further, the specifics of the defense are unclear as
 18 Defendants have provided no documents other than the agreement itself in connection with their
 19 opposition to Adobe's summary judgment motion. Now that the discovery period as well as the
 20 deadline to file dispositive motions has passed, Adobe is unquestionably prejudiced by the
 21 omission.

22 This case is distinguishable from cases which have forgiven the pleading defect when the
 23 defense was fully briefed or if it would have been case dispositive such as the statute of limitations.
 24 *See for example, Simmons*, 609 F.3d at 1023 (allowing res judicata defense which was raised in
 25 answer and briefed); *Owens*, 244 F.3d at 713 (allowing defense which would have been dispositive
 26 had it been asserted when the action was filed); *Magana*, 107 F.3d at 1446 (defense raised three
 27 months after filing of answer); *Rivera v. Anaya*, 726 F.2d 564, 566 (9th Cir. 1984) (allowing statute
 28

1 of limitations defense for a summary judgment motion where the plaintiff did not claim any
 2 prejudice); *Healy Tibbitts Construction Co. v. Insurance Co. of North America*, 679 F.2d 803 (9th
 3 Cir. 1982) (policy exclusion defense allowed by way of motion for summary judgment where no
 4 prejudice to plaintiff). The prior settlement release has not been fully briefed and should be
 5 excluded.

6 Whatever theory Defendants are advancing would have required separate discovery and
 7 briefing. Here, the parties have consistently agreed, at Defendants' urging, to a discovery period
 8 beginning from June 19, 2009, for sales, when the prior case was concluded. Defendant Hoops
 9 Enterprise, LLC was not even created until approximately November 2009. Deposition of
 10 Kornrumpf on behalf of Hoops Enterprise, LLC ("Hoops Depo.") at p. 10:13-16. Defendants'
 11 discovery responses indicate that there are no other relevant documents. Wang Decl. at ¶ 2.
 12 Because there is no evidence, relevant or not, that Defendants could now introduce, any defense
 13 based on the prior settlement agreement release should be precluded.

14 **3. Defendants Failed to Disclose The Evidence They Intend to Rely on To** 15 **Further Their Defense.**

16 Defendants had an obligation to disclose what evidence they intended to use at trial. Fed.
 17 R. Civ. P. 26. Absent disclosure, "the party is not allowed to use that information...at a trial,
 18 unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). This rule
 19 "gives teeth to [the disclosure] requirements by forbidding the use at trial of any information
 20 required to be disclosed by Rule 26(a) that is not properly disclosed." *Hoffman v. Constr.*
 21 *Protective Servs.*, 541 F.3d 1175, 1179 (9th Cir. 2008) *citing Yeti by Molly v. Deckers Outdoor*
 22 *Corporation*, 259 F.3d 1101, 1106 (9th Cir. 2001). Defendants, who would have had the burden of
 23 proof on this defense, have not produced any documents in support of any defense based on the
 24 prior settlement agreement other than attaching the prior settlement agreement itself to papers in
 25 support of their opposition to Adobe's motion for partial summary judgment in December of last
 26 year. Defendants then named witnesses, including counsel for the parties, as part of their pretrial
 27 disclosures, but had never made any inclination or disclosure of their intention to call such
 28

witnesses. Had the alleged release been a valid argument, and no doubt one Defendants would have known about from the beginning, they would have been required to disclose potential witnesses at the outset. Their failure to do so evidences the fact that this was never an argument they intended to pursue and was only raised after the Court rejected their first sale defense. Defendants' attempts to manufacture propriety by characterizing witnesses disclosed at this late hour, including trial counsel for Adobe, as "rebuttal witnesses," years after this case was filed, after discovery was closed, and dispositive motions filed, argued and decided, is improper and highly prejudicial to Adobe.

If Defendants overcome their pleading defect despite the clear prejudice to Adobe, they should be precluded from introducing any documents or evidence on this issue that was not previously produced or disclosed.

C. The Release Is Irrelevant and Inherently More Prejudicial Than Probative and, as such, Appropriately Excluded Under Fed. R. Evid. 402-403.

1. The Prior Settlement Agreement Release is of Scant Probative Value in the Present Matter Involving Different Parties and Products.

Pursuant to Fed. R. Evid. 403, "the court 'may exclude relevant evidence if its probative value is substantially outweighed by a danger of...unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time,' or other considerations. There is no probative value to the prior settlement release between Adobe and Defendant Kornrumpf that involved completely different products, different parties and sales occurring during a different time frame.

Defendant Hoops Enterprise, LLC was not a party to the prior action as it was created after the last settlement. Hoops Depo. at p. 10:13-16; Settlement Agreement p. 1, first recital.

The filed Permanent Injunction and Dismissal from the prior action had a very specific provision prohibiting Defendant Kornrumpf from dealing in Academic or Educational versions of Adobe's software. See Prior Injunction at ¶ 4(b). The same injunction stated that it was "without prejudice to any other valid rights of the Plaintiff or Defendant." *Id.* at ¶ 4(c). [REDACTED]

[REDACTED] Settlement Agreement at ¶ 4.

1 There is no probative value to Defendants' introduction of this evidence into the remaining case set
2 for trial.

3 Adobe also agreed not to assert damages based on sales predating the release at Defendants'
4 insistence. Defendants have not made it clear what theory they seek to advance, but they should be
5 prohibited from doing so at this late hour in the case.

6 For argument's sake, Defendants' only affirmative defense that could possibly rely on the
7 prior settlement is unclean hands. "The doctrine of unclean hands 'requires unconscionable, bad
8 faith, or inequitable conduct by the plaintiff in connection with the matter in controversy.'" *Escriba*
9 *v. Foster Poultry Farms*, 793 F. Supp. 2d 1147, 1169 (E.D. Cal. 2011) *citing Dickson, Carlson &*
10 *Campillo v. Pole*, 83 Cal. App. 4th 436, 446, 99 Cal. Rptr. 2d 678 (2000); *General Elec. Co. v.*
11 *Superior Court*, 45 Cal.2d 897, 899-900, 291 P.2d 945 (1955). However, this defense is not
12 supported by the prior settlement release between some of the parties concerning unrelated
13 versions of Adobe's software. Defendants have contended instead that the elimination of the
14 alleged secondary market under various fair use or first sale theories comprise Adobe's alleged bad
15 faith acts. In light of this void of value, the evidence's only purpose is to create confusion, bias and
16 unfair prejudice amongst the jurors and is properly excluded under Fed. R. Evid. 403.

17 **2. Confusion, Prejudice, Delay and Waste of Time are Near Certainties.**

18 Pursuant to Fed. R. Evid. 403, the court "may exclude relevant evidence if its probative
19 value is substantially outweighed by a danger of...unfair prejudice, confusing the issues, misleading
20 the jury, undue delay, wasting time," and/or other considerations.

21 Because there is no traction under any legal theory, the introduction of an alleged "carve-
22 out" into the present matter involving some but not all of the parties (Kornrumpf but not Hoops)
23 and involving different kinds of software not at issue here (OEM v. academic), is very confusing.
24 References are also unfairly prejudicial as Defendants will seek an improper association that
25 Adobe somehow acted overly-aggressively by suing Defendant Kornrumpf twice. What little
26 relevance it has to the present lawsuit, if any, is not outweighed by the danger of confusion and
27 unfair prejudice. The amount of time required to correct any confusion will no doubt cause undue
28

1 delay and waste of time. References to the prior settlement release have no place in the instant
 2 action, even if Defendants survive the pleading, disclosure, and other evidentiary defects. All
 3 references to the settlement release by Defendants are properly excluded.

4 **Motion in Limine No. 2 (First Sale)**

5 As noted above, the Court has already ruled that the first sale defense is inapplicable in this
 6 matter and accordingly, dismissed Defendant's remaining Counterclaim. Docket No. 160; *see also*
 7 Docket No. 175 at pp. 1:20-24, 2:26-3:8 ("this Court granted Adobe's motion for partial summary
 8 judgment, finding the first sale defense inapplicable. The Court also adjudicated Defendants'
 9 remaining counterclaim for unfair business practices, which was also based on the first sale
 10 doctrine, in Adobe's favor," and "[i]n the February 1, 2012 Order, the Court found that the
 11 evidence provided established that Adobe licenses, rather than sells, its Original Equipment
 12 Manufacturer (OEM) software, rendering the first sale defense unavailable to Defendants... The
 13 Court also found that the first sale doctrine does not apply to the Adobe OEM software that was
 14 manufactured abroad.") (*citations omitted*). The defense, evidence and argument relating to that
 15 topic are thus irrelevant to the remaining claims left for the jury to decide on liability and damages.
 16 *Laborers' Pension Fund v. A & C Environmental, Inc.*, 301 F.3d 768, 773 (7th Cir. 2002)
 17 (appropriate to exclude evidence regarding non-viable defenses). Notwithstanding the clear
 18 direction on this issue by the Court, Defendants have offered jury instructions, evidence and are
 19 attempting to call as witnesses, Hewlett-Packard, Dell and Fujitsu on the first sale issue (which are
 20 the subject of the concurrently filed motion to quash). Having been rejected as a matter of law,
 21 mention of this defense or the Counterclaim will only confuse the jury and needlessly waste time in
 22 violation of Fed. R. Evid. 403. All evidence, argument and any references are properly excluded.

23 **Motion in Limine No. 3 (Not Timely Produced or Disclosed)**

24 Defendants are prohibited from using or introducing any documents or testimony not
 25 previously disclosed. Fed. R. Civ. P. 26(a)(1)(A)(i)-(ii) requires that parties provide to each other
 26 "the name and, if known, the address and telephone number of each individual likely to have
 27 discoverable information—along with the subjects of that information—that the disclosing party
 28

1 may use to support its claims or defenses, unless the use would be solely for impeachment” and “a
2 copy — or a description by category and location — of all documents, electronically stored
3 information, and tangible things that the disclosing party has in its possession, custody, or control
4 and may use to support its claims or defenses, unless the use would be solely for impeachment.”
5 The language of Fed. R. Civ. P. 37 is clear that failure to “provide information or identify a witness
6 as required by Rule 26(a) or (e)” results in that party being unable to use the omitted information or
7 witness to supply evidence at trial, unless the failure was substantially justified or harmless. Fed.
8 R. Civ. P. 37(c)(1). This rule “gives teeth to these requirements by forbidding the use at trial of
9 any information required to be disclosed by Rule 26(a) that is not properly disclosed.” *Yeti by*
10 *Molly, Ltd.* 259 F.3d at 1106.

11 Defendants seek to offer into evidence testimony from witnesses disclosed only as part of
12 the pretrial exchange requirements. In addition to counsel for the parties, Defendants identified
13 “Kerry Thompson.” No summaries were provided of these witnesses’ testimony until May 17,
14 2012, essentially one month before trial was set to begin. Although described as “rebuttal”
15 witnesses, Defendants are engaging in game playing at this late stage to cover their own discovery
16 failures. Plaintiff is certainly prejudiced by these attempts to introduce new evidence into the case
17 that the parties have been preparing for trial for years. Defendants’ delay has been unwarranted
18 and their tactics cannot be condoned. These “rebuttal” and late disclosed witnesses (counsel for the
19 parties and Kerry Thompson) are properly excluded.

20 In the same vein, no documents concerning the prior settlement agreement were disclosed
21 in Defendants’ disclosures. Wang Decl. at ¶ 2, Ex. A. In discovery, other than the prior Settlement
22 Agreement itself, no other documents were even identified. *Id.* The Settlement Agreement itself
23 was not made part of the record until the filing of Defendants’ Opposition to Plaintiff’s Motion for
24 Partial Summary Judgment. Docket No. 143. Defendants also did not designate any witnesses
25 until the pretrial exchange (albeit improper advocate-witnesses) that could potentially have
26 information on this issue, other than Defendant Kornrumpf himself, pursuant to Fed. R. Civ. P.
27 26(a)(1)(A)(i). Wang Decl. at ¶ 2, Ex. A. Defendants were not justified in omitting documents and
28

witnesses on the issue of the prior Settlement Agreement as this would have been a defense they were aware of since the inception of this case. The lack of disclosure of the prior settlement in Defendants' pleadings and disclosures prevents Defendants from bringing forth evidence and witnesses on that topic at this late hour. Plaintiff is certainly harmed by not being able to fully prepare for trial on these issues if Defendants intend to introduce evidence and witnesses not previously disclosed. Defendants will be unable to meet their burden to prove an exception. *Yeti by Molly, Ltd.*, 259 F.3d at 1107 citing *Wilson v. Bradlees of New England, Inc.*, 250 F.3d 10, 21 (1st Cir. 2001) (burden is on party facing sanctions to show failure to comply was justified or harmless). In fact, the basis for Defendants' so-called "carve-out" defense is still unclear. But regardless, documents, witnesses, or other evidence not previously disclosed on this or any other topic are appropriately excluded.

Motion in Limine No. 4 (SIIA Enforcement Efforts)

Kornrumpf has a pending action against the SIIA pertaining to enforcement actions undertaken by the SIIA on behalf of another of its member companies, Symantec Corporation. *Hoops Enterprise, LLC v. Software and Information Industry Association*, District of Tennessee, Case No. 1:11-cv-00318 (filed Nov. 3, 2011). That action, the enforcement efforts which are the subject of that claim and, for that matter, any other enforcement actions undertaken by the SIIA on behalf of any member company other than Adobe are demonstrably irrelevant and properly excluded pursuant to Fed. R. Evid. 402. *Mathis v. Philips Chevrolet, Inc.*, 269 F.3d 771, 776 (7th Cir. 2001). There is no aspect of Adobe's claim against Defendants, nor of their purported denials and defenses concerning which these efforts pertaining to third parties are even arguably relevant.

In the alternative, such evidence is substantially more prejudicial than probative and such evidence is properly excluded pursuant to Fed. R. Civ. P. 403. Third-party efforts on behalf of third party rights owners can only distract the jury and unnecessarily prolong proceedings even if Defendants can conjure some attenuated relevance for such evidence.

Defendants' counterclaims were premised on the first sale issue and the theory that Plaintiff was pursuing sellers in the secondary market wrongfully as a result. As Mr. Kornrumpf and Hoops

Enterprise, LLC's actions are the only ones at issue in this litigation, references to the acts by unrelated third parties are irrelevant, confusing, and distracting. Similarly, as Adobe is the only Plaintiff in this case, references to Defendants' actions or involvement with non-Adobe products as relating to enforcement or allegations of infringement are properly excluded as well.

Motion in Limine No. 5 (Unrelated Enforcement Efforts)

During the course of the litigation, Defendants have attempted to cast themselves as victims of selective, over-eager enforcement on the part of Adobe. They argue on the one hand that Adobe indiscriminately prosecutes "mid-level" sellers such as Defendants and, on the other hand, that Adobe is "picking" on Defendants for extra-aggressive enforcement. In either event, the undisputed fact of widespread infringement of Adobe's valuable intellectual property rights and the equally undisputed (if unfortunate) fact that not all infringers can be pursued through civil enforcement are not relevant to Adobe's claims or Defendants' defenses.

Moreover, even were there some arguable relevance, its relevance is substantially outweighed by its prejudice, both by distracting the jury and by inviting time-consuming collateral argument and evidence to demonstrate why Adobe's more general enforcement efforts are both measured and non-discriminatory.

Motion in Limine No. 6 (Improper Violation of Advocate-Witness Rule)

Defendants have improperly identified both counsel for Adobe and counsel for Defendants as trial witnesses as part of their pretrial disclosures. Even should Defendants' witness designations survive the disclosure defect argued above, Ninth Circuit authority prohibits an attorney from appearing both as a witness and an advocate in the same litigation. *U.S. v. Prantil*, 764 F.2d 548, 552-553 (9th Cir. 1985); *see also* Rule 5-210 of the California Rules of Professional Conduct; Rule 3.7 of the ABA Model Rules Prof. Conduct. The advocate-witness rule has only three exceptions: (1) when the proposed testimony relates to a purely formal or uncontested matter; (2) when the need for the testimony could not have been reasonably anticipated and the evidence is necessary to prevent a miscarriage of justice; and (3) where a particular attorney's familiarity with a

1 case is such that withdrawal will irreparably injure his client's case. *Prantil*, 764 F.2d at 553 n.2.
 2 None of those exceptions apply here.

3 The Ninth Circuit has held that the advocate witness rule is “a necessary corollary to the
 4 more fundamental tenet of our adversarial system that juries are to ground their decisions on the
 5 facts of a case and not on the integrity or credibility of the advocates.” *Id.* The rule is “aimed at
 6 protecting the integrity of the fact finding process,” and “adherence to this time-honored rule is
 7 more than just an ethical obligation of individual counsel; enforcement of the rule is a matter of
 8 institutional concern implicating the basic foundations of our system of justice.” *Id.* at 553-54.
 9 Defendants are barred from calling counsel for Adobe or their own counsel as witnesses pursuant
 10 to controlling authority.

11 Defendants could have sought to introduce testimony from his own counsel, but Defendants
 12 never named any such attorneys in any disclosures and counsel, whose firm still represents
 13 Defendants, did not promptly withdraw from the conflicting role. *Id.* The delay in disclosure only
 14 further evidences the last minute nature of the waived argument concerning any alleged settlement
 15 release. “The advocate-witness rule is aimed at protecting the integrity of the fact-finding process,
 16 not at distorting the process itself.” *Prantil*, 764 F.2d at 554. Defendants’ obvious eleventh hour
 17 scramble to admit testimony from counsel, not previously disclosed, is a clear abuse and distortion
 18 of the trial process.

19 Therefore, should the Court ignore Defendants’ gross failure to disclose these witnesses
 20 previously, counsel for the parties should be excluded as trial witnesses as a matter of law and
 21 principle.

22 CONCLUSION

23 For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff’s
 24 motions in limine to exclude the above identified topics and references.

25 Dated: May 22, 2012

J. Andrew Coombs, A Professional Corporation

27 By: /s/ J. Andrew Coombs

J. Andrew Coombs

Annie S. Wang

28 Attorneys for Plaintiff Adobe Systems Incorporated

DECLARATION OF ANNIE S. WANG

I, ANNIE S. WANG, declare as follows:

1. I am an attorney at law duly admitted to practice before the Courts of the State of California and the United States Northern District of California. I am counsel of record for Plaintiff Adobe Systems Incorporated (“Plaintiff” or “Adobe”) in an action styled Adobe Systems Incorporated v. Kornrumpf, et al. Except as otherwise stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows.

2. Defendants have maintained that discovery concerning their sales in this matter should not pre-date June 19, 2009, the date of the last settlement. Docket No. 40 at p. 2. No documents concerning the prior settlement were identified in Defendants’ initial disclosures, a true and correct copy of which is attached hereto as Exhibit A. No documents concerning the prior settlement were produced in connection with discovery requests including those that specifically requested “DOCUMENTS RELATING TO licenses or authorizations to create, produce, manufacture, distribute, sell or offer to sell the ADOBE PRODUCT,” and “DOCUMENTS not previously identified in these requests which RELATE TO or support any claims or defenses to the COMPLAINT.” In response to the former request for production, Defendants’ response identified the confidential settlement agreement as being the only responsive document, but also stated that “As for documents relating to ADOBE PRODUCT in general (as defined by Requesting Party) no such documents exist.”

3. I was personally and principally involved with the settlement discussions on behalf of Adobe in the prior action. I never spoke with Mr. Kornrumpf directly as part of the prior action. The main contact for Defendant Kornrumpf was attorney Michael Miretsky. Attached hereto as Exhibit B is a true and correct copy of an email from Mr. Miretsky to me, dated June 12, 2009, discussing the scope of the injunction and the triggering events for the stipulated judgment.

4. I request, pursuant to Federal Rules of Evidence, Rule 201(b) that the Court take judicial notice of the Permanent Injunction and Dismissal With Prejudice (“Prior Injunction”) filed

1 as Docket No. 27 on July 21, 2009, in the action *Adobe Systems Incorporated v. Kornrumpf*, Case
2 No. C08-5513 CW, a true and correct copy of which is attached hereto as Exhibit C.

3
4 I declare under penalty of perjury under the laws of the United States that the foregoing is
5 true and correct.

6 Executed this 22nd day of May, 2012, at Glendale, California.

7 /s/ Annie S. Wang
8 ANNIE S. WANG
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 John D. McCurdy, Esq., State Bar No. 54091
2 Reagan E. Boyce, Esq., State Bar No. 248064
3 McCURDY & LEIBL, LLP
4 12925 Riverside Drive, Third Floor
5 Sherman Oaks, California 91423
6 Tel: (818) 380-0123
7 Fax: (818) 380-0124

8 Attorneys for Defendant / Counter-Claimant, Hoops Enterprise, LLC (erroneously sued and
9 served as Anthony Kornrumpf, a/k/a Tony Kornrumpf)

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 Adobe Systems Incorporated,

15 Plaintiff,

16 vs.

17 Anthony Kornrumpf a/k/a Tony Kornrumpf and
18 Does 1-10, Inclusive,

19 Defendants.

20 And Related Actions.

Case No.: CV1002769 CW

[Assigned for All Purposes to:
Hon. Claudia Wilken, Courtroom 2]

**DEFENDANT'S VOLUNTARY
DISCLOSURES PURSUANT TO FED. R.
CIV. P. 26**

Complaint Filed: 06/24/10

INITIAL DISCLOSURE STATEMENT

21 Defendants/Counter-Claimants, HOOPS ENTERPRISE, LLC and Anthony Kornrumpf,
22 (hereinafter "HOOPS"), hereby makes the following Initial Disclosures in accordance with Fed.
23 R. Civ. P. 26(a)(1). HOOPS does not waive any valid objections it may have to any request to
24 produce documents identified herein. This disclosure is made on information reasonably
25 available to HOOPS as of this date. HOOPS reserves the right to supplement this disclosure if
26 and when additional responsive information is discovered or available.

27 ///

28 ///

1 (A) Witnesses:

2 1. Tony Kornrumpf,

3 Managing Member of HOOPS ENTERPRISE, LLC

4 May be contacted through counsel of record

5 McCurdy & Leibl, LLP

6 12925 Riverside Drive, 3rd Floor

7 Sherman Oaks, CA 91423

8 (818) 380-0123

9 2. Chris Stickle

10 Enforcement Manager, Anti-Piracy

11 Adobe Systems Incorporated

12 601 Townsend St.

13 San Francisco, CA 94103

14 (415) 832-5187

15 cstickle@adobe.com

16 3. Scott Bain

17 Scott Bain

18 Legislative Counsel

19 Software and Information Industry Association

20 HOOPS also identifies as potential witnesses in support of its defense, those third party
21 service providers, and/or suppliers who may be identified as having discoverable information, as
22 well as various employees of Plaintiff / Counter-Defendant ADOBE and Third Party Defendant,
23 Software and Information Industry Association ("SIIA"), after further discovery is conducted.

24 (B) Documents:

25 In accordance with Fed. R. Civ. P. 26(a)(1)(B), HOOPS hereby provides the following
26 descriptions of categories of non-privileged documents known to him at this time that may be
27 relevant to this matter.

28 1. E-mail correspondence by and between HOOPS and eBay regarding the subject

1 auctions, and Plaintiff/Counter-Defendant and/or Third Party Defendant's request that said
2 auctions be removed.

3 2. E-mail correspondence by and between HOOPS and Business Software Alliance
4 ("BSA") and Third Party Defendant, SIIA regarding the software at issue in this matter.

5 3. Business records of HOOPS relating to the acquisition and sale of products at
6 issue in this matter.

7 These documents are located either at McCurdy and Leibl, LLP or at HOOPS' place of
8 business in Tennessee and will be made available by counsel of record, McCurdy and Leibl,
9 LLP, 12925 Riverside Drive, 3rd Floor, Sherman Oaks, CA 91423.

10 (C) Damages Computation:

11 HOOPS contests Plaintiff's claim of actual damages and contests any basis for statutory
12 damages.

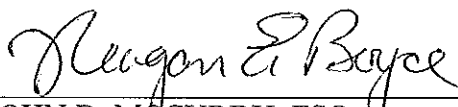
13 HOOPS contends that the actions of Plaintiff/Counter-Defendant ADOBE and Third
14 Party Defendant SIIA's conduct has resulted in a loss of business profits, goodwill, economic
15 opportunity and has caused HOOPS to incur attorney's fees and costs in defending the
16 Complaint.

17 (D) Insurance:

18 Not applicable.

19
20 DATED: December 6, 2010

McCURDY & LEIBL, LLP

21
22 By: 
23 JOHN D. McCURDY, ESQ.
24 REAGAN E. BOYCE, ESQ.
25 Attorneys for Defendants/Counter-
26 Claimants, Hoops Enterprise, LLC and
27 Anthony Kornrumpf
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Sherman Oaks, State of California. I am over the age of 18 and not a party to the within action; my business address is 12925 Riverside Drive, Third Floor, Sherman Oaks, California 91423.

On December 7, 2010, I served the foregoing document described as **DEFENDANT'S VOLUNTARY DISCLOSURES PURSUANT TO FED. R. CIV.P.26** on the parties in this action by placing a true copy(ies) or the original(s) thereof enclosed in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiff, Adobe Systems Incorporated

J. Andrew Coombs, Esq.
Annie Wang, Esq.
J. Andrew Coombs, A Professional Corp.
517 East Wilson Avenue, Suite 202
Glendale, CA 91206
Tel: (818) 500-3200
Fax: (818) 500-3201

☒ **(BY MAIL)**

I placed said document in an envelope addressed as shown on the service list. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, said correspondence will be deposited with the United States Postal Service the same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on the date stated below to the address stated on the attached service list, following the firm's ordinary business practices.

(STATE)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ **(FEDERAL)**

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 7, 2020 at Sherman Oaks, California.



Lauren Brodsky

EXHIBIT B

**EXHIBIT SUBMITTED FOR FILING
UNDER SEAL**

**EXHIBIT SUBMITTED FOR FILING
UNDER SEAL**

EXHIBIT C

J. Andrew Coombs (SBN 123881)
andy@coombsp.com
 Annie S. Wang (SBN 243027)
annie@coombsp.com
 J. Andrew Coombs, A Prof. Corp.
 517 East Wilson Avenue, Suite 202
 Glendale, California 91206
 Telephone: (818) 500-3200
 Facsimile: (818) 500-3201

Attorneys for Plaintiff
 Adobe Systems Incorporated

John D. McCurdy, Esq. (SBN 54091)
jmccurdy@jml.com
 Michael Miretsky, Esq. (SBN 180734)
mmiretsky@jml.com
 McCurdy & Leibl, LLP
 12925 Riverside Drive, Third Floor
 Sherman Oaks, California 91423
 Telephone: (818) 380-0123
 Facsimile: (818) 380-0124

Attorney for Defendant
 Tony Kornrumpf

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

Adobe Systems Incorporated,	)	Case No.: C08-5513 CW
)	
Plaintiff,	)	PERMANENT INJUNCTION AND
v.	)	DISMISSAL WITH PREJUDICE
)	
Tony Kornrumpf and Does 1 – 10, inclusive,)	
)	
Defendants.)	

The Court, having read and considered the Joint Stipulation for Permanent Injunction and Dismissal with Prejudice that has been executed by Plaintiff Adobe Systems Incorporated (“Plaintiff”) and Defendant Tony Kornrumpf (“Defendant”) in this action, and good cause appearing therefore, hereby:

ORDERS that based on the Parties’ stipulation and only as to Defendant, his successors, heirs, and assignees, this Injunction shall be and is hereby entered in the within action as follows:

1) This Court has jurisdiction over the parties to this action and over the subject matter hereof pursuant to 17 U.S.C. § 101 *et seq.*, 15 U.S.C. § 1051, *et seq.*, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338. Service of process was properly made against Defendant.

2) Plaintiff is the owner of all rights in and to the copyright and trademark registrations listed in Exhibits A and B attached hereto and incorporated herein by this reference (collectively referred to herein as “Plaintiff’s Properties”).

3) Plaintiff has alleged that Defendant has made unauthorized uses of Plaintiff’s Properties or substantially similar likenesses or colorable imitations thereof.

4) Defendant and his agents, servants, employees and all persons in active concert and participation with him who receive actual notice of the Injunction are hereby restrained and enjoined from:

a) Infringing Plaintiff’s Properties, either directly or contributorily, in any manner, including generally, but not limited to manufacturing, importing, distributing, advertising, selling and/or offering for sale any unauthorized or piratical product which features any of Plaintiff’s Properties (“Unauthorized Products”), and, specifically from:

i) Importing, manufacturing, distributing, advertising, selling and/or offering for sale the Unauthorized Products or any other unauthorized products which picture, reproduce, copy or use the likenesses of or bear a substantial similarity to any of Plaintiff’s Properties;

ii) Importing, manufacturing, distributing, advertising, selling and/or offering for sale in connection thereto any unauthorized promotional materials, labels, packaging or containers which picture, reproduce, copy or use the likenesses of or bear a confusing similarity to any of Plaintiff’s Properties;

iii) Engaging in any conduct that tends falsely to represent that, or is likely to confuse, mislead or deceive purchasers, Defendant’s customers and/or members of the public to believe, the actions of Defendant, the products sold by Defendant, or

Defendant himself is connected with Plaintiff, is sponsored, approved or licensed by Plaintiff, or is affiliated with Plaintiff;

iv) Affixing, applying, annexing or using in connection with the importation, manufacture, distribution, advertising, sale and/or offer for sale or other use of any goods or services, a false description or representation, including words or other symbols, tending to falsely describe or represent such goods as being those of Plaintiff.

b) Defendant specifically agrees that he will not now, nor at any time in the future, advertise, offer to sell, sell or distribute any Academic or Educational versions of Plaintiff's software.

c) This Injunction is without prejudice to any other valid rights of the Plaintiff or Defendant.

5) Each side shall bear its own fees and costs of suit.

6) Except as provided herein, all claims alleged in the Complaint are dismissed with prejudice.

7) This Injunction shall be deemed to have been served upon Defendant at the time of its execution by the Court.

8) The Court finds there is no just reason for delay in entering this Injunction and, pursuant to Rule 54(a) of the Federal Rules of Civil Procedure, the Court directs immediate entry of this Injunction against Defendant.

9) The Court shall retain jurisdiction of this action to entertain such further proceedings and to enter such further orders as may be necessary or appropriate to implement and enforce the provisions of this Injunction.

10) The above-captioned action, shall, upon filing by Plaintiff of the Joint Stipulation re Entry of [Proposed] Judgment, [Proposed] Final Judgment and requesting entry of judgment against Defendant, be reopened should Defendant default under the terms of the Settlement Agreement.

11) This Court shall retain jurisdiction over the Defendant for the purpose of making further orders necessary or proper for the construction or modification of this permanent injunction and

1 judgment; the enforcement hereof; the punishment of any violations hereof, and for the possible
2 entry of a further Judgment Pursuant to Stipulation in this action.

3
4 DATED: 7/21/09



5
6 Hon. Claudia Wilken
United States District Judge

7 PRESENTED BY:

8 J. Andrew Coombs,
9 A Professional Corporation

10 By: _____
J. Andrew Coombs
Annie S. Wang
Attorneys for Plaintiff Adobe Systems Incorporated

11 McCurdy & Leibl, LLP

12 By: _____
13 Michael Miretsky
14 Attorney for Defendant Tony Kornrumpf

EXHIBIT A
Copyright Registrations

Title of Work	Copyright Registration No.
Acrobat 3D	TX0006277233
Acrobat Capture 1.0.	TX0004559023
Acrobat Capture 1.0.	TX0004559023
Acrobat Capture 2.0.	TX0004509574
Acrobat Capture 2.0.	TX0004509574
Acrobat Catalog for Windows.	TX0004001286
Acrobat Catalog for Windows.	TX0004001286
Acrobat Distiller 2.1 for Macintosh.	TX0004169553
Acrobat Distiller 2.1 for Macintosh.	TX0004169553
Acrobat Distiller 2.1 for Microsoft Windows.	TX0004169555
Acrobat Distiller 2.1 for Microsoft Windows.	TX0004169555
Acrobat Distiller for Microsoft Windows.	TX0003893510
Acrobat Distiller for Microsoft Windows.	TX0003893510
Acrobat Exchange 2.0 for Macintosh.	TX0004001287
Acrobat Exchange 2.0 for Macintosh.	TX0004001287
Acrobat Exchange 2.1 for Macintosh.	TX0004169554
Acrobat Exchange 2.1 for Macintosh.	TX0004169554
Acrobat Exchange 2.1 for UNIX.	TX0004231310
Acrobat Exchange 2.1 for UNIX.	TX0004231310
Acrobat Exchange and Acrobat Reader for Macintosh.	TX0003611923
Acrobat Exchange and Acrobat Reader for Macintosh.	TX0003611923
Acrobat Exchange and Acrobat Reader for Windows.	TX0003611922
Acrobat Exchange and Acrobat Reader for Windows.	TX0003611922
Acrobat Reader 2.0 for Windows.	TX0003893506
Acrobat Reader 2.0 for Windows.	TX0003893506
Acrobat Reader 3.0.	TX0004509573
Acrobat Reader 3.0.	TX0004509573
Acrobat Search for Macintosh.	TX0003991344
Acrobat Search for Windows.	TX0003978856
Acrobat Search for Windows.	TX0003978856
Acrobat.	TX0001644799
Adobe Accelio Capture Advanced Client 4.0 for Windows.	TX0005553357
Adobe Accelio Integrate Suite 6.0 for Windows.	TX0005553342
Adobe Acrobat 3.0 for Macintosh, Windows and UNIX.	TX0004583920
Adobe Acrobat 3.0 for Macintosh, Windows and UNIX.	TX0004583920
Adobe Acrobat 4.0.	TX0004961793
Adobe Acrobat 5.0 for Macintosh.	TX0005545266
Adobe Acrobat 5.0 for Windows.	TX0005545265
Adobe Acrobat 5.0 Getting Started Guide.	TX0005545267
Adobe Acrobat 6.0 for Macintosh.	TX0005748744
Adobe Acrobat 6.0 for Windows.	TX0005748745
Adobe Acrobat 7.0 Standard for Macintosh.	TX0006045087
Adobe Acrobat 7.0 Standard for Windows.	TX0006045086
Adobe Acrobat 8 Professional for Macintosh.	TX0006390830
Adobe Acrobat 8 Professional for Windows.	TX0006390827

1	Adobe Acrobat 8 Standard for Macintosh.	TX0006390829
	Adobe Acrobat 8 Standard for Windows.	TX0006390828
2	Adobe Acrobat Approval 5.0 for Macintosh.	TX0005654837
	Adobe Acrobat Approval 5.0 for Macintosh.	TX0005654837
3	Adobe Acrobat Approval 5.0 for Windows.	TX0005436556
	Adobe Acrobat Capture 3.0 source code.	TX0005199559
4	Adobe Acrobat Connect 1.0 for Macintosh.	TX0006390834
	Adobe Acrobat Connect 1.0 for Windows.	TX0006390835
5	Adobe Acrobat Distiller Server 5.0.5.	TX0005758527
	Adobe Acrobat Distiller Server 6.0 for UNIX.	TX0005847807
6	Adobe Acrobat Distiller Server 6.0 for Windows.	TX0005847832
	Adobe Acrobat eBook Reader v. 2.0.	TX0005335249
7	Adobe Acrobat eBook Reader v. 2.0.	TX0005335250
	Adobe Acrobat Elements 1.0 for Windows.	TX0005611299
8	Adobe Acrobat Elements 6.0 for Windows.	TX0005780821
	Adobe Acrobat Elements Server 6.0 for Windows.	TX0005848340
9	Adobe Acrobat Fill in 4.0.	TX0004241942
10	Adobe Acrobat Inroduction 1.0.	TX0005200942
	Adobe Acrobat Inroduction 1.0.	TX0005200942
11	Adobe Acrobat Messenger 1.0.	TX0005241268
	Adobe Acrobat Reader 5.0 for Macintosh.	TX0005412874
12	Adobe Acrobat Reader 5.0 for Windows.	TX0005412875
	Adobe Acrobat Reader 5.0.5 for AIX.	TX0005605114
13	Adobe Acrobat Reader 5.0.5 for HP-UX.	TX0005605113
	Adobe Acrobat Reader 5.0.5 for Solaris.	TX0005617024
14	Adobe Acrobat Reader 5.05 for Linux.	TX0005617021
	Adobe Acrobat Reader 5.1 for Macintosh.	TX0005620676
15	Adobe Acrobat Reader 5.1 for Windows.	TX0005620677
	Adobe Acrobat Reader for Palm OS 1.0 for Windows.	TX0005422793
16	Adobe Acrobat Reader for Palm OS 2.0 (Macintosh)	TX0005617023
17	Adobe Acrobat Reader for Palm OS 2.0 (Windows)	TX0005617022
	Adobe Acrobat Reader for Palm OS Beta Windows.	TX0005422794
18	Adobe Acrobat Reader for Pocket PC : Version 1.0.	TX0005489269
	Adobe ActiveShare 1.0.	TX0005086423
19	Adobe ActiveShare 1.5 for Windows.	TX0005267528
	Adobe After Effects : 7.0 Professional for Windows.	TX0006277334
20	Adobe After Effects : Version 5.0 for Macintosh.	TX0005392887
	Adobe After Effects : Version 5.0 for Windows.	TX0005438054
21	Adobe After Effects : Version 5.5 for Macintosh.	TX0005493399
	Adobe After Effects : Version 5.5 for Windows.	TX0005493400
22	Adobe After Effects : Version 6.0 for Macintosh.	TX0005777908
	Adobe After Effects : Version 6.0 for Windows.	TX0005777907
23	Adobe After Effects 3.0 for Macintosh.	TX0004643401
	Adobe After Effects 4.0 for Macintosh and Windows.	TX0005011464
24	Adobe After Effects 5.5 Plug-in Power Pack for MacIntosh.	TX0005546626
	Adobe After Effects 5.5 Plug-in Power Pack for Windows.	TX0005546627
25	Adobe After Effects 6.5 for Macintosh.	TX0005934788
	Adobe After Effects 7.0 Standard for Macintosh.	TX0006277333
26	Adobe After Effects 7.0 Standard for Windows.	TX0006277335
27	Adobe After Effects CS3 Professional for Windows and Macintosh.	TX0006457851
28		

	Adobe After Effects Production Bundle : Version 5.5 for Macintosh.	TX0005493398
1	Adobe After Effects Production Bundle : Version 5.5 for Windows.	TX0005493401
2	Adobe After Effects Production Bundle 5.0 for Macintosh.	TX0005392886
	Adobe After Effects Production Bundle 5.0 for Windows.	TX0005392888
3	Adobe After Effects Version 6.5 for Windows.	TX0005934787
	Adobe AlterCast 1.5 for Solaris.	TX0005520581
4	Adobe AlterCast 1.5 for Windows.	TX0005520583
	Adobe Atmosphere : Version 1.0 Public Beta.	TX0005401513
5	Adobe Atmosphere 1.0 for Windows.	TX0005780857
	Adobe Atmosphere Player 1.0 for Windows.	TX0005748760
6	Adobe Audition 1.0 for Windows.	TX0005777207
	Adobe Audition 1.5 for Windows.	TX0005932189
7	Adobe Audition 2.0 for Windows.	TX0006277359
	Adobe Audition 3.0 for Windows.	TX0006816095
8	Adobe Barcoded Paper Forms Solution 1.0 for Macintosh.	TX0005936309
9	Adobe Captivate 2 for Windows.	TX0006390833
	Adobe Carlson Regular.	TX0003374876
10	Adobe Caslon Alternate Bold Italic : Version 001.000.	TX0003501138
	Adobe Caslon Alternate Bold.	TX0003501547
11	Adobe Caslon Alternate Italic : Version 001.000.	TX0003501139
	Adobe Creative Suite 2 Premium for Macintosh.	TX0006131248
12	Adobe Creative Suite 2 Premium for Windows.	TX0006131245
	Adobe Creative Suite 2 Standard for Macintosh.	TX0006131247
13	Adobe Creative Suite 3 Master Collection for Windows and Macintosh	TX0006457918
14	Adobe Creative Suite 2 Standard for Windows.	TX0006131246
	Adobe Creative Suite for Macintosh.	TX0005844481
15	Adobe Creative Suite for Windows.	TX0005844480
	Adobe Dreamweaver CS3 Professional for Windows and Macintosh	TX0006534561
16	Adobe Exchange 2.0 for Windows.	TX0003961129
	Adobe Extension Manager CS3 for Windows and Macintosh.	TX0006531581
17	Adobe Flash CS3 Professional for Windows and Macintosh.	TX0006531604
	Adobe Flash CS3 Professional for Windows and Macintosh.	TX0006531604
18	Adobe Flash Media Encoder 1.0.	TX0006526716
19	Adobe Flash Media Encoder 1.0.	TX0006526716
	Adobe Flash Player 9 for Linux.	TX0006476523
20	Adobe Flash Player 9 for Linux.	TX0006476523
	Adobe Flash Player 9 for Solaris.	TX0006457897
21	Adobe Illustrator : Version 5.0.1 (Mac).	TX0003846115
	Adobe Illustrator : Version 5.5 (Mac).	TX0003846114
22	Adobe Illustrator : Version 6.0 Macintosh.	TX0004240043
	Adobe Illustrator 10 for Macintosh.	TX0005446858
23	Adobe Illustrator 10 for Windows.	TX0005446857
24	Adobe Illustrator 3.0.	TX0003000202
	Adobe Illustrator 8.0 for Macintosh and Windows.	TX0004953097
25	Adobe Illustrator 9.0 for Macintosh and Windows.	TX0005159819
	Adobe Illustrator CS for Macintosh.	TX0005780817
26	Adobe Illustrator CS for Windows.	TX0005780806
	Adobe Illustrator CS3 for Windows and Macintosh.	TX0006531603
27	Adobe Illustrator.	TX0003380406
28	Adobe PageMaker 6.0 for Macintosh, Power Macintosh.	TX0004093314

1	Adobe PageMaker 6.5 Macintosh.	TX0004524555
2	Adobe PageMaker 7.0 for Macintosh.	TX0005409447
3	Adobe PageMaker 7.0 for Windows.	TX0005409446
4	Adobe Pagemaker Plug-in Pack for Macintosh.	TX0005847834
5	Adobe Pagemaker Plug-in Pack for Windows.	TX0005847833
6	Adobe Photoshop : 5.5.	TX0005213806
7	Adobe Photoshop 6.0.	TX0005196369
8	Adobe Photoshop 7.0 for Macintosh.	TX0005562147
9	Adobe Photoshop 7.0 for Windows.	TX0005562148
10	Adobe Photoshop Album 2.0 for Windows.	TX0005780785
11	Adobe Photoshop CS for Macintosh.	TX0005780846
12	Adobe Photoshop CS for Windows.	TX0005780847
13	Adobe Photoshop CS2 for Macintosh.	TX0006131272
14	Adobe Photoshop CS2 Official JavaScript Reference	TX0006273756
15	Adobe Photoshop CS3 for Windows and Macintosh.	TX0006528611
16	Adobe Photoshop Elements : 4.0 for Macintosh.	TX0006277687
17	Adobe Photoshop Elements 1.0 for Macintosh and Windows.	TX0005329106
18	Adobe Photoshop Elements 2.0 for Macintosh.	TX0005592639
19	Adobe Photoshop Elements 2.0 for Windows.	TX0005592638
20	Adobe Photoshop Elements 4.0 for Windows.	TX0006139024
21	Adobe Photoshop Lightroom 1.0 for Macintosh and Windows.	TX0006526701
22	Adobe Photoshop Macintosh.	TX0003551958
23	Adobe Photoshop Version 3.0 Mac.	TX0003971820
24	Adobe Photoshop Version 3.0 Windows.	TX0003616850
25	Adobe Photoshop Version 5.0 Macintosh and Windows.	TX0004856009
26	Adobe Photoshop Windows.	TX0003596143
27	Adobe Photoshop.	TX0004068613
28	Adobe Photoshop.	TX0003120306
	Adobe Photoshop.	TX0002897138
	Adobe Soundbooth CS3 for Windows and Macintosh	TX0006457903
	Adobetyping Manager Deluxe 4.6 User Guide : Macintosh.	TX0005176752
	Adobe PhotoDeluxe, V1.0.	TX0004809739
	Adobe Photoshop : Version 4.0 : Macintosh and Windows.	TX0004571653
	Authorware 7.0	TX0005800627
	Contribute 4 (Mac)	TX0006471404
	Designer 6.0 (Win)	TX0005932242
	Encore DVD 2.0	TX0006277348
	Font Folio 9.0 (Mac)	TX0005401449
	Font Folio Open Type	TX0005845931
	Form Manager 6.0	TX0006042527
	Framemaker 7.0 (Mac)	TX0005596921
	Framemaker 7.0 (Win)	TX0005596919
	FreeHand MX (Mac)	TX0005746988
	GoLive CS2 (Mac)	TX0006131268
	GoLive CS2 (Win)	TX0006131269
	Illustrator CS2 (Mac)	TX0006131282
	Illustrator CS2 (Win)	TX0006131283
	InCopy CS (Mac)	TX0005780859
	InCopy CS (Win)	TX0005780858
	InDesign CS2 (Mac)	TX0006139165

1	Macintosh Distiller.	TX0003893508
2	Macintosh PDF Writer.	TX0003893509
3	Macintosh Reader.	TX0003893511
4	Macromedia ColdFusion MX 7	TX0006201577
5	Macromedia Dreamweaver MX 2004	TX0005852659
6	Macromedia Fireworks MX 2004	TX0005839595
7	Macromedia Flash Lite 2.0	TX0006288632
8	Macromedia Flash Media Server 2	TX0006335779
9	Macromedia Flash MX 2004 Pro	TX0005852657
10	Macromedia RoboHelp HTML X5	TX0005944534
11	Macromedia RoboHelp X5	TX0005944535
12	Macromedia Shockwave for Authorware Run-time Version 3.5 [for Macintosh, Power Macintosh, Windows 3.1/95/NT]	TX0004695283
13	Macromedia Shockwave for FreeHand 5.0 (for Macintosh, Power Macintosh, Windows 3.1/95/NT)	TX0004671697
14	PhotoDeluxe 2.0 (Mac)	TX0004771678
15	PhotoDeluxe 2.0 (Win)	TX0004617316
16	Photoshop CS2 (Win)	TX0006131279
17	Photoshop Elements 5.0	TX0006389641
18	Premiere 7.0	TX0005777909
19	Premiere Elements 3.0	TX0006389647
20	Premiere Pro 1.5	TX0005931988
21	Premiere Pro 2.0	TX0006275628
22	Production Studio 1.0	TX0006277349
23	Shockwave for Director 5.0.	TX0004700912
24	Windows PDF Writer.	TX0003893507

EXHIBIT B
Trademark Registrations

<u>Trademark</u>	<u>Title of Work:</u>	<u>Rights Owner:</u>
-------------------------	------------------------------	-----------------------------

Registration No.:		
2,081,343	"A" (SQUARE DESIGN)	Adobe Systems Incorporated
1,988,710	"A" (SQUARE DESIGN)	Adobe Systems Incorporated
3,032,288	"A" (SQUARE DESIGN)	Adobe Systems Incorporated
1,901,149	"A" ADOBE and Design	Adobe Systems Incorporated
1,852,943	"A" STYLIZED (ACROBAT DESIGN)	Adobe Systems Incorporated
1,988,711	"A" STYLIZED (ACROBAT DESIGN)	Adobe Systems Incorporated
2,825,116	1-STEP ROBOPDF	eHelp Corporation
2,704,585	360CODE	Adobe Systems Incorporated
2,757,422	6-DOT CIRCLE DESIGN	Adobe Systems Incorporated
2,757,423	6-DOT CIRCLE DESIGN	Adobe Systems Incorporated
2,068,523	ACROBAT	Adobe Systems Incorporated
1,833,219	ACROBAT	Adobe Systems Incorporated
1,997,398	ACROBAT CAPTURE	Adobe Systems Incorporated
2,754,764	ACROBAT MESSENGER	Adobe Systems Incorporated
3,380,847	ACTIONSRIPT	Adobe Systems Incorporated
2,206,045	ACTIVEEDIT	Macromedia, Inc.
2,551,513	ACTIVESHARE	Adobe Systems Incorporated
2,221,926	ACTIVETEST	Macromedia, Inc.
1,475,793	ADOBE	Adobe Systems Incorporated
1,486,895	ADOBE	Adobe Systems Incorporated
1,956,216	ADOBE	Adobe Systems Incorporated
1,988,712	ADOBE	Adobe Systems Incorporated
3,029,061	ADOBE	Adobe Systems Incorporated
2,861,671	ADOBE AUDITION	Adobe Systems Incorporated
1,855,098	ADOBE DIMENSIONS	Adobe Systems Incorporated
2,916,709	ADOBE ENCORE	Adobe Systems Incorporated
1,631,416	ADOBE GARAMOND	Adobe Systems Incorporated
1,479,408	ADOBE ILLUSTRATOR	Adobe Systems Incorporated
3,065,143	ADOBE LIVECYCLE	Adobe Systems Incorporated
1,673,308	ADOBE ORIGINALS DESIGN	Adobe Systems Incorporated
1,651,380	ADOBE PHOTOSHOP	Adobe Systems Incorporated
1,769,184	ADOBE PREMIERE	Adobe Systems Incorporated
2,722,546	ADOBE STUDIO	Adobe Systems Incorporated
2,725,810	ADOBE STUDIO	Adobe Systems Incorporated
2,725,811	ADOBE STUDIO	Adobe Systems Incorporated
1,482,233	ADOBE SYSTEMS INCORPORATED (Stylized)	Adobe Systems Incorporated
1,487,549	ADOBE SYSTEMS INCORPORATED (Stylized)	Adobe Systems Incorporated
1,605,378	ADOBE TYPE MANAGER	Adobe Systems Incorporated
1,707,807	ADOBE WOOD TYPE	Adobe Systems Incorporated
1,970,781	AFTER EFFECTS	Adobe Systems Incorporated
1,481,416	ALDUS	Adobe Systems Incorporated
1,483,149	ALDUS AND HEAD LOGO	Adobe Systems Incorporated
1,483,150	ALDUS HEAD LOGO	Adobe Systems Incorporated
1,977,310	ALEXA	Adobe Systems Incorporated
2,234,653	ANDREAS	Adobe Systems Incorporated
3,438,976	ARNO	Adobe Systems Incorporated
2,814,007	ATMOSPHERE	Adobe Systems Incorporated
1,961,762	AUTHORWARE	Adobe Systems Incorporated
2,034,149	BALZANO	Adobe Systems Incorporated
2,137,197	BANSHEE	Adobe Systems Incorporated

1	2,024,607	BENSON SCRIPTS	Adobe Systems Incorporated
	2,137,890	BICKHAM SCRIPT	Adobe Systems Incorporated
2	1,692,614	BIRCH	Adobe Systems Incorporated
	1,692,613	BLACKOAK	Adobe Systems Incorporated
3	2,523,062	BLUE ISLAND	Adobe Systems Incorporated
	3,065,084	BREEZE	Adobe Systems Incorporated
4	2,864,988	BREEZE	Adobe Systems Incorporated
	2,799,082	BRIOSO	Adobe Systems Incorporated
5	3,422,754	BUZZWORD	Adobe Systems Incorporated
	1,892,606	CAFLISCH SCRIPT	Adobe Systems Incorporated
6	2,449,593	CALCITE	Adobe Systems Incorporated
	1,982,999	CALIBAN	Adobe Systems Incorporated
7	3,184,511	CAPTIVATE	Adobe Systems Incorporated
	3,136,772	CAPTIVATE	Adobe Systems Incorporated
8	3,189,917	CAPTIVATE	Adobe Systems Incorporated
	1,582,280	CARTA	Adobe Systems Incorporated
9	2,635,948	CERTIFIED ROBOHELP INSTRUCTOR	eHelp Corporation
	2,089,496	CHAPARRAL	Adobe Systems Incorporated
10	1,629,024	CHARLEMAGNE	Adobe Systems Incorporated
	1,901,215	CLASSROOM IN A BOOK	Adobe Systems Incorporated
11	2,637,308	CLEARLY ADOBE IMAGING	Adobe Systems Incorporated
	2,557,911	CLEARLY ADOBE IMAGING and Design	Adobe Systems Incorporated
12	2,993,457	CO-AUTHOR	Adobe Systems Incorporated
	1,971,442	COLD FUSION	Adobe Systems Incorporated
13	2,113,033	CONGA BRAVA	Adobe Systems Incorporated
	3,143,377	CONTRIBUTE	Adobe Systems Incorporated
14	1,982,985	COPAL	Adobe Systems Incorporated
	2,164,702	CORIANDER	Adobe Systems Incorporated
15	1,628,152	COTTONWOOD	Adobe Systems Incorporated
	3,111,341	CREATIVE SUITE	Adobe Systems Incorporated
16	1,873,167	CRITTER	Adobe Systems Incorporated
	2,093,645	CRONOS	Adobe Systems Incorporated
17	1,665,322	CUSTOMERFIRST (Stylized)	Adobe Systems Incorporated
	2,468,691	DESIGN IN MOTION	Macromedia, Inc.
18	1,600,438	DIRECTOR	Adobe Systems Incorporated
	1,525,396	DISPLAY POSTSCRIPT	Adobe Systems Incorporated
19	1,843,525	DISTILLER	Adobe Systems Incorporated
	2,294,926	DREAMWEAVER	Adobe Systems Incorporated
20	3,276,189	DV RACK	Adobe Systems Incorporated
	2,949,766	ENCORE	Adobe Systems Incorporated
21	2,151,180	EPAPER	Adobe Systems Incorporated
	2,893,662	EPAPER	Adobe Systems Incorporated
22	2,005,020	EX PONTO	Adobe Systems Incorporated
	2,043,911	FIREWORKS	Adobe Systems Incorporated
23	2,855,434	FLASH	Adobe Systems Incorporated
	2,852,245	FLASH	Adobe Systems Incorporated
24	3,473,651	FLASH LITE	Adobe Systems Incorporated
	2,844,051	FLASHHELP	Adobe Systems Incorporated
25	2,690,356	FLASHJESTER (3rd Eye Solutions, Inc.)	3rd Eye Solutions, Inc.
26		Cancellation	
	3,166,399	FLASHPAPER	Adobe Systems Incorporated
27	3,370,163	FLEX	Adobe Systems Incorporated
	2,198,260	FLOOD	Adobe Systems Incorporated
28			

1	1,546,371	FONT & FUNCTION	Adobe Systems Incorporated
	2,857,527	FONT FOLIO	Adobe Systems Incorporated
2	1,822,467	FONTOGRAPHER	Adobe Systems Incorporated
	1,479,470	FRAME MAKER	Adobe Systems Incorporated
3	1,715,303	FRAMEVIEWER	Adobe Systems Incorporated
	2,214,844	FREEHAND	Adobe Systems Incorporated
4	2,245,944	FUSAKA	Adobe Systems Incorporated
	2,024,281	GALAHAD	Adobe Systems Incorporated
5	1,935,819	GIDDYUP	Adobe Systems Incorporated
	1,935,818	GIDDYUP THANGS	Adobe Systems Incorporated
6	2,432,447	GOLIVE	Adobe Systems Incorporated
	2,446,265	HOMESITE	Adobe Systems Incorporated
7	2,375,606	HTML HELP STUDIO	Adobe Systems Incorporated
	2,060,488	ILLUSTRATOR	Adobe Systems Incorporated
8	2,317,828	IMAGEREADY	Adobe Systems Incorporated
	2,238,581	IMMI 505	Adobe Systems Incorporated
9	2,550,638	INCOPY	Adobe Systems Incorporated
	2,439,079	INDESIGN	Adobe Systems Incorporated
10	2,533,054	INSCOPE	Adobe Systems Incorporated
	2,473,641	IPREDICT	eHelp Corporation
11	1,626,882	IRONWOOD	Adobe Systems Incorporated
	1,980,096	JIMBO	Adobe Systems Incorporated
12	1,633,039	JUNIPER	Adobe Systems Incorporated
	2,157,319	KEPLER	Adobe Systems Incorporated
13	2,161,024	KINESIS	Adobe Systems Incorporated
	2,607,473	KOZUKA GOTHIC	Adobe Systems Incorporated
14	2,263,701	KOZUKA MINCHO	Adobe Systems Incorporated
	1,549,854	LASERTALK (STYLIZED)	Adobe Systems Incorporated
15	3,288,605	LIGHTROOM	Adobe Systems Incorporated
	1,630,698	LITHOS	Adobe Systems Incorporated
16	3,065,142	LIVECYCLE	Adobe Systems Incorporated
	2,691,851	LIVEMOTION	Adobe Systems Incorporated
17	2,424,671	MACROMEDIA	Adobe Systems Incorporated
	2,650,911	MACROMEDIA FLASH	Adobe Systems Incorporated
18	2,520,435	MACROMEDIA FLASH	Adobe Systems Incorporated
	1,733,965	MADRONE	Adobe Systems Incorporated
19	1,629,940	MESQUITE	Adobe Systems Incorporated
	1,973,932	MEZZ	Adobe Systems Incorporated
20	1,798,496	MINION	Adobe Systems Incorporated
	2,137,882	MOJO	Adobe Systems Incorporated
21	2,687,487	MONTARA	Adobe Systems Incorporated
	2,672,180	MOONGLOW	Adobe Systems Incorporated
22	1,759,108	MYRIAD	Adobe Systems Incorporated
	1,889,189	MYTHOS	Adobe Systems Incorporated
23	1,980,127	NUEVA	Adobe Systems Incorporated
	2,130,427	NYX	Adobe Systems Incorporated
24	2,971,613	O (STYLIZED)	Adobe Systems Incorporated
	2,584,364	OPEN SESAME!	Allaire Corporation
25	2,137,926	OUCH!	Adobe Systems Incorporated
	3,427,904	P (Stylized)	Adobe Systems Incorporated
26	2,091,087	PAGEMAKER	Adobe Systems Incorporated
	1,496,726	PAGEMAKER	Adobe Systems Incorporated
27	1,486,556	PAGEMAKER	Adobe Systems Incorporated
28			

1	2,979,463	PDF JOBREASY	Adobe Systems Incorporated
	2,553,370	PDF MERCHANT	Adobe Systems Incorporated
2	1,984,563	PENUMBRA	Adobe Systems Incorporated
	1,882,825	PEPPERWOOD	Adobe Systems Incorporated
3	1,503,706	PERSUASION	Adobe Systems Incorporated
	2,655,175	PHOTOMERGE	Adobe Systems Incorporated
4	1,850,242	PHOTOSHOP	Adobe Systems Incorporated
	2,920,764	PHOTOSHOP	Adobe Systems Incorporated
5	1,760,600	POETICA	Adobe Systems Incorporated
	1,692,610	POPLAR	Adobe Systems Incorporated
6	2,233,952	POSTINO	Adobe Systems Incorporated
	1,544,284	POSTSCRIPT	Adobe Systems Incorporated
7	1,463,458	POSTSCRIPT	Adobe Systems Incorporated
	1,383,131	POSTSCRIPT	Adobe Systems Incorporated
8	2,066,675	POSTSCRIPT LOGO	Adobe Systems Incorporated
	2,574,091	PRESSREADY	Adobe Systems Incorporated
9	1,887,832	QUAKE	Adobe Systems Incorporated
	1,935,820	RAD	Adobe Systems Incorporated
10	2,548,832	READER	Adobe Systems Incorporated
	2,204,266	RELIQ	Adobe Systems Incorporated
11	2,787,091	ROBOASSIST	eHelp Corporation
	2,953,255	ROBOENGINE	Adobe Systems Incorporated
12	2,770,413	ROBOFLASH	eHelp Corporation
	1,732,772	ROBOHELP	Adobe Systems Incorporated
13	2,498,876	ROBOHELP	Adobe Systems Incorporated
	2,498,889	ROBOHELP OFFICE	eHelp Corporation
14	2,610,653	ROBOINFO	Adobe Systems Incorporated
	2,732,494	ROBOINSTALL	eHelp Corporation
15	2,808,741	ROBOLINKER	eHelp Corporation
	2,881,638	ROBOPRESENTER	eHelp Corporation
16	2,805,027	ROBOSCREENCAPTURE	eHelp Corporation
	1,882,826	ROSEWOOD	Adobe Systems Incorporated
17	1,509,123	ROUNDTRIP	Adobe Systems Incorporated
	2,817,626	ROUNDTRIP HTML	Adobe Systems Incorporated
18	2,993,082	RYO	Adobe Systems Incorporated
	1,893,565	SANVITO	Adobe Systems Incorporated
19	2,893,840	SAVA	Adobe Systems Incorporated
	3,410,080	SEE WHAT'S POSSIBLE	Adobe Systems Incorporated
20	1,901,566	SHOCKWAVE	Adobe Systems Incorporated
	2,648,129	SHOCKWAVE	Adobe Systems Incorporated
21	2,388,945	SHOCKWAVE	Adobe Systems Incorporated
	2,145,311	SHURIKEN BOY	Adobe Systems Incorporated
22	2,493,281	SILENTIUM	Adobe Systems Incorporated
	1,985,335	SOFTWARE VIDEO CAMERA	Adobe Systems Incorporated
23	1,477,490	SONATA	Adobe Systems Incorporated
	3,350,284	SOUNDBOOTH	Adobe Systems Incorporated
24	2,314,590	STRUMPF	Adobe Systems Incorporated
	1,887,833	STUDZ	Adobe Systems Incorporated
25	1,682,713	TEKTON	Adobe Systems Incorporated
	2,055,667	TOOLBOX	Adobe Systems Incorporated
26	1,626,877	TRAJAN	Adobe Systems Incorporated
	1,518,719	TRANSCRIPT	Adobe Systems Incorporated
27	1,674,052	TYPE REUNION	Adobe Systems Incorporated
28			

2,980,999	ULTRA	Adobe Systems Incorporated
2,638,231	ULTRADEV	Macromedia, Inc.
1,623,439	UTOPIA	Adobe Systems Incorporated
2,883,313	VERSION CUE	Adobe Systems Incorporated
2,983,111	VISUAL COMMUNICATOR	Adobe Systems Incorporated
1,881,212	VIVA	Adobe Systems Incorporated
2,358,623	VOLUTA	Adobe Systems Incorporated
2,454,239	WARNOCK	Adobe Systems Incorporated
2,711,779	WATER DROP DESIGN	Adobe Systems Incorporated
2,169,463	WATERS TITLING	Adobe Systems Incorporated
1,717,050	WILLOW	Adobe Systems Incorporated
2,872,489	XMP	Adobe Systems Incorporated